

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

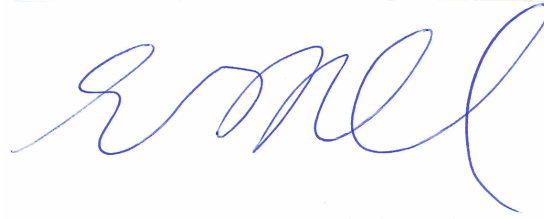
IN RE:	:	Chapter 7
	:	
RAFAIL THEOKARY,	:	
	:	
Debtor	:	Bky. No. 07-11008ELF
	:	
	:	
RAFAIL THEOKARY,	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
ERIC ABBATIELLO, et al.,	:	Adv. No. 09-051
	:	
Defendants	:	

ORDER

AND NOW, upon consideration of the following motions (collectively, “the Motions”) the parties have filed since the September 10, 2009 final pretrial conference:

- A. Defendant Showplace Farms’ Motion to Dismiss and for Sanctions (Docket Entry No. 91);
- B. Defendant Gaitway Farm, Inc.’s Motion to Dismiss and for Sanctions (Docket Entry No. 92);
- C. Defendants Eric Abbatiello, Gaitway Farm, Inc., Tom Shay and Showplace Farms’ Motion to Strike Documents Plaintiff Filed Pro Se and for Sanctions (Docket Entry No. 97);
- D. Defendants Eric Abbatiello, Gaitway Farm, Inc., Tom Shay and Showplace Farms’ Motion to Schedule a Perjury Hearing for Plaintiff Rafail Theokary (Docket Entry No. 104); and
- E. Plaintiff’s Motion to Strike Defendant Showplace Farms’ Memorandum in Support of Its Motion for Dismissal (Docket Entry No. 105);

It is hereby **ORDERED** that the Motions are **DENIED**.¹



Date: October 12, 2009

ERIC L. FRANK
U.S. BANKRUPTCY JUDGE

¹ In this litigation, counsel for both sides have shown a pervasive and disturbing inability to comply with this court's local rules, which set out the basic procedural requirements for motion practice, see, e.g., Docket Entry Nos. 33, 94, 104, 105, and have expended needless time and expense filing various defective motions. In particular, I have previously denied four dispositive motions filed by the parties (two (2) by each side), sometimes on procedural grounds, sometimes on the merits. See Docket Entry Nos. 10, 34; id. Nos. 32, 39; id. 42, 56; id. Nos. 57, 78.

Nevertheless, at the final pretrial conference on September 10, 2009, after reviewing the Joint Pre-Trial Statement and considering the statements of counsel regarding the evidence expected to be presented at trial, I concluded that it would be in the interests of justice to give Defendants Gaitway Farm, Inc. and Showplace Farms one last opportunity to request dismissal of the Plaintiff's claims and to avoid the potentially needless expense of trial.

The September 10th Order granting Defendants Gaitway and Showplace leave to file motions for summary judgment has spawned a series of additional, procedurally irregular motions. See Docket Entry Nos. 97, 104, 105. These motions are being denied for failure to comply with the rules of court. They should **not** be refiled prior to trial.

As for the merits of the two (2) motions to dismiss authorized by the September 10th Order, the Plaintiff has come forward with some evidence to suggest that each of these defendants either participated in some manner in the post-petition lien sale of the property at issue in this dispute or otherwise deprived the Debtor of possession of the horses while the automatic stay was in effect. These factual issues will have to be vetted at trial.